

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAMOAL CLARKE,

Plaintiff,

-against-

THE CITY OF NEW YORK, SERGEANT SEAN
CLAXTON (Shield 1500) and POLICE OFFICER
MOHAMMAD ALI (Shield 23614),

Defendants.

CV 13-CV-13-1249
COMPLAINT

JURY TRIAL DEMANDED
BRODIE, J.

AZRACK, M.J.

Plaintiff JAMOAL CLARKE, by his attorney, Joel Berger, Esq., for his complaint alleges, upon information and belief, as follows:

NATURE OF THE ACTION

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution and laws of the United States and the State of New York, including false arrest and false imprisonment, by employees of the New York City Police Department (NYPD),

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1333.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1331 (b).

PENDANT JURISDICTION

5. This Court also has jurisdiction over plaintiff's state law claims, pursuant to its pendent or supplemental jurisdiction as codified in 28 U.S.C. § 1337.

6. On December 18, 2012, within ninety days after the claims alleged in this complaint

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EASTERN DISTRICT COURT
OF NEW YORK

arose, a verified Notice of Claim was duly served upon the Comptroller of the City of New York pursuant to General Municipal Law § 50-e. A Comptroller's hearing pursuant to General Municipal Law 50-H was conducted on March 6, 2013.

7. At least thirty days have elapsed since the service of the Notice of Claim, and adjustment or payment of the claims has been neglected or refused by defendant City of New York.

8. This action is being commenced within one year and ninety days after the happening of the events upon which the claims are based.

JURY DEMAND

9. Plaintiff demands trial by jury in this action.

PARTIES

10. Plaintiff Jamoal Clarke, age 25, is a black male who is a citizen of the United States and a resident of the State of New York. He is from St. Vincent And The Grenadines, and came to the United States in 2006. He has a GED degree. He has no criminal record of any kind, having never even been arrested except in the incident of this lawsuit. He has been accepted for enlistment in the United States Army and will be formally inducted on or about April 16, 2013.

11. Defendant City of New York is a municipal corporation organized under the laws of the State of New York. It operates the NYPD, a department or agency of defendant City of New York responsible for the appointment, training, supervision, promotion and discipline of police officers and supervisory police officers, including the individually named defendants herein.

12. At all times relevant herein, defendant Sean Claxton, shield 1500, was a sergeant employed by the NYPD, assigned to the 67th Precinct in Brooklyn, NY.

13. At all times relevant herein, defendant Mohammad Ali, shield 23614, was a police

officer assigned to the 61st Precinct in Brooklyn, NY.

14. At all times relevant herein, defendants Claxton and Ali were acting as agents, servants and employees of defendant City of New York and the NYPD.

15. At all times relevant herein, all defendants were all acting under color of state law.

FACTS

16. On September 23, 2012, at approximately 11:20 P.M., in the vicinity of Church Avenue and 54th Street in Brooklyn, NY, plaintiff Jamoal Clarke was illegally arrested by defendant Sergeant Sean Claxton.

17. At the time of the arrest plaintiff was merely observing a police action -- the arrest of a single individual -- in which plaintiff was not involved in any manner.

18. Despite the fact that plaintiff was doing nothing wrong, Claxton grabbed him and slammed him into a metal gate, injuring his right shoulder and causing his lower lip and the shoulder to bleed.

19. Claxton handcuffed plaintiff behind his back with metal handcuffs.

20. After plaintiff was handcuffed Claxton punched plaintiff in the back several times with a clenched fist.

21. Plaintiff was placed in a police SUV and, accompanied by approximately five police officers, he was transported to the 67th police precinct, 2820 Snyder Avenue, Brooklyn, NY. There were no other arrestees in the SUV.

22. At the 67th precinct Mr. Clarke was placed in a squalid cell that smelled of urine and was occupied by 4-5 other arrestees, and he remained in that cell for approximately 1½ -2 hours.

23. Plaintiff's right shoulder was in severe pain and bleeding, and he asked Claxton to transport him to a hospital. Claxton ignored the request.

24. Claxton threatened plaintiff that he was going to be charged with assaulting a police officer and resisting arrest -- two charges that had no basis whatsoever.

25. However, Mr. Clarke was subsequently released with merely a summons for disorderly conduct.

26. Upon his release plaintiff proceeded immediately to Kings County Hospital to have his shoulder examined. He was there for approximately 3-4 hours. He was given a sling that he needed to use for approximately the next two weeks, during which time he experienced severe pain in the shoulder.

27. The summons issued to plaintiff, signed by defendant police officer Ali, alleges a violation of Penal Law § 240.20 (5), which requires that the defendant, "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof ... obstructs vehicular or pedestrian traffic."

28. Plaintiff did not violate Penal Law §240.20 (5), nor did he commit any other offense.

29. The summons required plaintiff to appear in court at 346 Broadway in Manhattan on Friday, December 14, 2012.

30. Mr. Clarke did appear in that court on December 14, 2012, at which time he was advised by the court clerk's office that the summons had already been dismissed.

31. The clerk stamped "dismissed" on plaintiff's copy of the summons and plaintiff did not have to appear before a judge.

32. The Certificate of Disposition, dated the previous day – December 13, 2012 – states “DISM – LEGALLY INSUFFICIENT.” The judge was Hon. Gerald Picket, Part SAP-D. A copy of the Certificate of Disposition is annexed to this complaint as Exhibit A. A copy of the summons and the Criminal Court Information written by Ali on the back of the summons is annexed as Exhibit B.

33. Either the police never followed through in support of the summons, or the Court dismissed the summons because the facts recited in the information were legally insufficient to support the charge.

34. PO Ali’s information does not allege that plaintiff acted intentionally or recklessly, and it does not allege that plaintiff caused or risked any public inconvenience, annoyance or alarm. Ali merely asserts that, “as informed by Sgt. Claxton,” plaintiff was “obstructing pedestrian traffic with others” and “refused to disperse.”

35. Even the allegations that recite an insufficient portion of the statutory requirements are untrue, fabricated by Claxton. At no time did plaintiff obstruct pedestrian traffic, either by himself or with others. At no time did plaintiff refuse to disperse.

36. The Criminal Court Information was obviously written hastily and sloppily as an after-the-fact attempt to legitimize an illegal arrest by a police sergeant who did not like the fact that bystanders were observing his activities.

37. In addition to the physical pain in his shoulder from Claxton’s excessive and unnecessary use of force, plaintiff has been emotionally injured by the incident. He has become reclusive and reluctant to engage in activities. He is very fearful of police. He avoids them and becomes worried whenever he sees a police officer.

FIRST CLAIM FOR RELIEF

38. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-37.
39. Defendants, by their conduct toward plaintiff alleged herein, violated plaintiff's rights guaranteed by 42 U.S.C. § 1983, the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

SECOND CLAIM FOR RELIEF

40. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-37 and 39.
41. The acts complained of herein are a direct and proximate result of the failure of the City of New York and the NYPD properly to select, train, supervise, promote and discipline police officers, detectives and supervisory officers.
42. The failure of the City of New York and the NYPD properly to select, train, supervise, promote and discipline police officers, detectives and supervisory officers constitutes gross and deliberate indifference to unconstitutional conduct by those officers.
43. The official policies, practices and customs of the City of New York and the NYPD, alleged in ¶¶ 1-30, 32 and 33-34 violated plaintiff's rights guaranteed by 42 U.S.C. § 1983, the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

THIRD CLAIM FOR RELIEF

44. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-37, 39, and 41-43.
45. The conduct toward plaintiff alleged herein constituted false arrest, false

imprisonment, malicious prosecution, the unnecessary and excessive use of force, and employee negligence.

46. The conduct toward plaintiff alleged herein subjected this man with no prior arrest record to trauma, shock, debasement, shame, fright, fear, humiliation, embarrassment, loss of freedom, harassment, and physical, psychological and emotional injury, trauma, pain, and suffering.

FOURTH CLAIM FOR RELIEF

47. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-37, 39, 41-43, and 45-46.

48. At all times relevant herein, the individual defendants were on duty and were acting within the scope of their employment as agents, servants and employees of the City of New York, which is therefore responsible for their conduct under common law, state law and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against all individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 11, 2013



JOEL BERGER

360 Lexington Avenue, 16th Fl.
New York, New York 10017
(212) 687-1425

ATTORNEY FOR PLAINTIFF

EXHIBIT A

THE PEOPLE OF THE STATE OF NEW YORK
VS.

CLARKE, JAMUAL

DEFENDANT

164 LINDEN BLVD

ADDRESS

BROOKLYN NY 11226-3642

CITY STATE ZIP

FEE: **\$10.00**

09/12/1947

DATE OF BIRTH

DOCKET NUMBER: 2012SK118579

SUMMONS NUMBER: 4335952958

PL 240.20 05 OV

ARRAIGNMENT CHARGES

CASE DISPOSITION INFORMATION:

DATE	COURT ACTION	JUDGE	PART
12/13/2012	DISM - LEGALLY INSUFFICIENT	PICKETT,G	SAP-D

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN THIS COURT.



01/03/2013

COURT OFFICIAL SIGNATURE AND SEAL

DATE

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE
COURT SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

EXHIBIT B

AA-5002 (1/06)		SUMMONS	
433595-295-8		Susp/Rev. Check: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Motorist Exhibited License: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Last Name <i>Clark</i>	First Name <i>James</i>	M.I. <i>J.</i>	
Street Address <i>164 Lincoln Blvd</i>		Ap't. No. <i></i>	
City <i>St. Louis</i>	State <i>MO</i>	Zip Code <i>63116</i>	
ID Number <i>1234567890</i>	Date of Birth <i>09/12/1971</i>	Sex <input checked="" type="checkbox"/> M	
Class <input type="checkbox"/> SEDAN <input type="checkbox"/> TRUCK <input type="checkbox"/> VAN <input type="checkbox"/> OTHER	Class of ID <input type="checkbox"/> NY <input type="checkbox"/> CT <input type="checkbox"/> PA <input type="checkbox"/> NJ <input type="checkbox"/> OTHER	Date Expires <input type="checkbox"/> 01 <input type="checkbox"/> 02 <input type="checkbox"/> 03 <input type="checkbox"/> 04 <input type="checkbox"/> 05 <input type="checkbox"/> 06 <input type="checkbox"/> 07 <input type="checkbox"/> 08 <input type="checkbox"/> 09 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20 <input type="checkbox"/> 21 <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28 <input type="checkbox"/> 29 <input type="checkbox"/> 30 <input type="checkbox"/> 31	Operator Owns Vehic <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
DISMISSED			
OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE			
AM <input type="checkbox"/> 11:20 <input checked="" type="checkbox"/> 11:30	PM Date of Offense <i>7/23/12</i>	County <i>Kings</i>	Precinct <i>207</i>
Place of Occurrence <i>54 Street & Church Ave</i>		Violation of <input type="checkbox"/> VTL <input type="checkbox"/> Traffic Rules <input type="checkbox"/> Admin Rules <input type="checkbox"/> Other <i></i>	
Description of Criminal Court Offense (including traffic misdemeanor) <i>Double Park</i>			
SPEEDING <input type="checkbox"/> MPH <input type="checkbox"/> Min MPH zones <input type="checkbox"/> Sign <input type="checkbox"/> Pavement <input type="checkbox"/> Signal <input type="checkbox"/> Marks		DISOBEY TRAFFIC CO. DEV. <input type="checkbox"/> Uninsp. Veh. <input type="checkbox"/> Uninsur. Veh. <input type="checkbox"/> Imp. Veh. <input type="checkbox"/> Bus <input type="checkbox"/> Haz. Mat.	
The person described above is summoned to appear CRIMINAL COURT <i>34th Precinct</i>		Summons Part <input type="checkbox"/> 1st <input checked="" type="checkbox"/> NY	
located at <i>34th Precinct</i>		Date of Appearance <i>7/23/12</i>	
I personally delivered the summons to the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 80.45 of the Penal Law. Affirmed under penalty of perjury.			
Rank/Full Signature of Complainant <i>15</i>			
Signature of Plaintiff (Printed) <i>John Doe</i>		Complaint Code <input type="checkbox"/> 01 <input type="checkbox"/> 02 <input type="checkbox"/> 03 <input type="checkbox"/> 04 <input type="checkbox"/> 05 <input type="checkbox"/> 06 <input type="checkbox"/> 07 <input type="checkbox"/> 08 <input type="checkbox"/> 09 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20 <input type="checkbox"/> 21 <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28 <input type="checkbox"/> 29 <input type="checkbox"/> 30 <input type="checkbox"/> 31	
I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.			
Name <i>John Doe</i>		Date <i>7/23/12</i>	
CRIMINAL COURT			

433595297-8

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The People of The State of New York v.s.

Susp/Rev Check Yes No
Motorist Exhibited License Yes No

Last Name

Clarke Jamoa

First Name

M.I.

Street Address

164 Linden Blvd

Apt. No.

City

Brooklyn NY

State

4

Zip Code

ID Number

Personal Project

Date of Birth

Sex

MO 09 DAY 12 YR 87 M

Lic. State

Lic. Class or ID Type

Date Expires

Operator Owns Vehicle

MO DAY YR

 Yes No

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No.

TYPE	PAS	OMT	COM	OML	Other	M	CHEV	FORD	HONDA	DODG	OLDS	BUICK	TOYT	NISS	Other	Reg. Expires		
																MO	DAY	YR
SEDAN	Subn	VAN	TRUCK	UNCL	Other	M	CHEV	FORD	HONDA	DODG	OLDS	BUICK	TOYT	NISS	Other			
BY OT DT YE																		

VIN No.

164

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time

PM Date of Offense

County

Precinct

 28:20

9/23/12

Kings

067

Place of Occurrence

C/o E 54 street & Church Ave

IN VIOLATION OF

VTL	Traff. Rules	Admin. Code	Penal Code	Other
			X	

Sec 240.20 Sub (5)

Description of Violation, if Not Shown Below. (If returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE DATE, AND SIGN INFORMATION ON REVERSE SIDE.)

LIC. STATE / NCIC CODE

DISORDERLY CONDUCT

SPEEDING		DISOBEY TRAFF CONT DEV		Uninspec. Veh.		Unreg. Veh.		Unlic. Oper.	
MPH	In MPH Zone	<input type="checkbox"/> Sign	Pave Marks	<input type="checkbox"/>	Uninsur. Veh.	Com. Veh.	Bus	Haz. Mat.	
		<input type="checkbox"/> Signal							

The person described above is summoned to appear at CRIMINAL COURT

Summons Part

County

Located at 346 Brooklyn 1FL NY

Date of Appearance

2 PM

day of

December year 2012

I personally observed the individual above commit the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant

PO M. Aci

Command Code

0164

Agency/NCIC

NYPD

Squad

E1

Tax Registry No.

969986

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Signature

SERVED

Date

59/94/12

MPH

100/75/25

100/75/25

~~CRIMINAL COURT INFORMATION (DISCRETE OFFENSE)~~

~~AT TIPLO, AS INFORMED BY SGT.~~

~~CLANTON TAX # 943092 DEPT LOTS~~

~~MPH~~

~~REMOVED SEVERAL TIMES TO DISPERSE FROM
LOCATION WHILE OBSTRUCTING PEDESTRIAN
TRAFFIC WITH OTHERS; DEPT. REPUGED
TO DISPERSE.~~

WARRANT CHECK

Yes No

~~PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.~~

09/24/18
Date

24-11-18
Signature

DEFENDANT DESCRIPTION

Eye Color **Hair Color** **Ethnicity**
Ht. **Wt.** **Phone #**

ARRAIGNMENT

Defendant pleads **Guilty** **Not Guilty**

Date

Judge

①

WARRANT CHECK

~~PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.~~

09/24/18
Date

DEFENDANT DESCRIPTION

Eye Color **Hair Color** **Ethnicity**



Defendant pleads * 4 3 3 5 9 5 2 9 5 8 *

